OPTIONS PAPER

FOR

PAY EQUITY

IN THE ONTARIO PUBLIC SERVICE

ONTARIO MINISTRY OF LABOUR,

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I. INTRODUCTION

- The commitment of the Government of Ontario to pay equity, or equal pay for work of equal value, was affirmed by the Premier on July 2, 1985 in a statement to the Legislature. He announced two separate but parallel initiatives: the development of a pay equity program to cover the Ontario Public Service, and the formation of an interministerial Task Force, headed by the Attorney General and charged with the preparation of a Green Paper on the means of implementing the pay equity principle in the Province's private sector and broader public sector. The Minister of Labour was subsequently accorded responsibility for direction of the public service project, which has focussed on developing pay equity legislation for the Ontario Public Service (OPS).

- This dual approach recognises some of the important differences between the respective sectors which impinge upon the practical realisation of pay equity principles - for example, the much higher degree of unionization in the OPS than in the general workforce, the larger average size of the employer organizations involved, and the fact that the OPS is not required to compete in the market place in the same way that private companies are.

- A further important difference is the relative degree of disparity in the earnings of males and females. In 1982, the average annual full-time earnings of females in Ontario were only 62 per cent of the corresponding figure for males. In the Ontario Public Service, the 1984 earnings ratio was significantly higher, at 77 per cent.

- The overall earnings gap reflects the influence of a variety of factors. These include differences in hours of work, labour market experience, education, level of unionization, occupational segregation, as well as gender-based pay discrimination for substantially similar work within an enterprise.

- Occupational segregation, in particular, is one signifcant factor in the earnings gap. Apart from its obvious effect in terms of the under-representation of females in higher-paying occupations, it is argued that it has further contributed to the overall difference in earnings between males and females by way of a general societal undervaluation of work traditionally performed by females, which is reflected in the rates of pay for female-dominated jobs.

- The basic purpose of pay equity policy is to provide a means of redress for the depressant effect of this phenomenon on the wage levels of female-dominated jobs relative to those predominantly occupied by males. While quantification of the resultant impact on the earnings gap is the subject of some controversy, it is clear that pay equity initiatives can only address part of the gap; the contributory effects of the other factors mentioned above will remain. Accordingly, complementary policies including affirmative action, child-care, job training and equal pay for equal work programs are necessary to achieve the goal of full employment equity.

- In seeking to develop a pay equity program for the Ontario Public Service, the Ministry of Labour has established an ongoing consultation process involving interested groups, including in particular the public service employer organizations and unions who would be directly affected by such a program. The object throughout has been to devise a scheme adapted to the specific characteristics of the OPS.

- In the course of the discussions which have taken place, a number of key issues have been identified. In general, their resolution involves choosing between a number of legitimate alternative approaches, some of which have implications which extend beyond the confines of pay equity into other areas of governmental policy. The major portion of this paper is devoted to an examination of these key issues, some possible alternatives for addressing them, and their respective implications. Collectively, once resolved, they will define the parameters of the Ontario Public Service pay equity program.

- The key issues highlighted in the paper are to be weighed within the context of a set of underlying principles considered to constitute a stable foundation for development of an OPS pay equity program. These premises, which are also articulated in the Green Paper on Employment Equity, are as follows:

  1. The purpose of the legislation is to address gender discrimination only.

     The purpose of pay equity is to remedy discrimination in pay on the basis of gender, not to address differences in pay between employees reflecting other factors.

  2. Comparisons are to address the valuation of "women's work" only.

     Pay equity addresses the problem of the societal undervaluation of traditionally "women's work"; therefore, remedy will be limited to employees in female-dominated occupations.

  3. "Equal Value" does not mean "Identical Value".

     Pay equity does not require that jobs under comparison be identical in value for the principle of equal pay for work of equal value to apply. Rather, a range of similarity or equivalency in value will be permitted.

  4. Comparisons must be made within an establishment.

     Pay equity comparisons will be limited to jobs within the same establishment, as is the case with pay equity in other jurisdictions as well as Ontario's current equal pay for equal work legislation.

  5. The legislation will not be retroactive.

     The legislation will apply to conditions existing only after its proclamation; however, employees will still be able to recover back pay from equal pay for equal work claims under existing legislation.

6. The legislation will not permit a reduction in wages to satisfy its requirements.

   As is the case with Federal, Quebec, and Manitoba pay equity legislation and current Ontario equal pay for equal work legislation, employers will be prohibited from reducing the wages of any employee(s) to comply with pay equity legislation.

- In addition, since pay equity adjustments would result in rates of pay different from those provided for in an existing collective agreement, a mechanism will be needed to ensure the primacy of the pay equity program's provisions and to incorporate the associated changes into the agreement.

- In order to utilize effectively the collective bargaining process to develop a pay equity plan, it will be necessary to have full sharing of information between employers and unions with respect to the nature of the job comparison/evaluatation methodologies to be considered, the results of applying one or more of these methodologies to specific jobs, the concentration of males and females in various levels of job groupings, the distribution of pay of male and female employees, potential differences in benefits received by male and female employees, etc.

- Subject to the underlying premises outlined above, the key issues involved in devising a detailed OPS pay equity program, along with the implications of alternative approaches to addressing them, are discussed in the third section of this paper. Prior to that, however, in the next section the organizational coverage of the OPS pay equity program is described, and the experiences of other Canadian and U.S. jurisdictions with pay equity legislation are examined.

II. BACKGROUND

1. Legislative Coverage and the Ontario Public Service

- For purposes of coverage of the proposed legislation, the Ontario Public Service (OPS) is defined to include all those employed or appointed under the Public Service Act, plus all employees of the six agencies which bargain under the Crown Employees Collective Bargaining Act (Ontario Housing Corporation, Liquor Control Board of Ontario, Liquor Licence Board of Ontario, Workers' Compensation Board, Toronto Area Transit Operating Authority, and the Niagara Parks Commission).

- The total number of employees for the OPS, as defined, is approximately 75,700, of whom just over 31,000 (41 per cent) are women.

- Each of the constituent organizations within the OPS has separate compensation systems for bargaining unit and non-bargaining unit employees. Together they utilize a wide variety of different job evaluation or job classification systems, ranging through point-rating, benchmark/factor comparison, grade description, and ranking/market comparison schemes. [See Appendix A.]

- The job classification and salary structures which result are complex. In the Ontario Civil Service, for example, there are 10 different categories within the bargaining unit alone, with salary revisions negotiated separately for each. Collectively, they account for more than 50 occupational groups, 350 class series, and in excess of 700 separate job classes. In addition, the Management Compensation Plan is divided into 5 broad modules, each with its own pay plan, covering 52 occupational groups. Finally, the Executive Compensation Plan contains two sub-systems, with a total of six classification levels. Approximately 20 per cent of employees in the Ontario Civil Service are not covered by collective agreements.

2. Pay Equity Legislation in Other Jurisdictions

- Three Canadian jurisdictions (Federal, Quebec, Manitoba) currently have pay equity legislation. In addition, a number of recent developments in this field in the U.S. are of direct interest. [See Appendix B.]

i) Canada (Federal)

- Since 1977, the Canadian Human Rights Act has prohibited an employer from establishing or maintaining differences in wages between male and female employees who are performing work of equal value in the same establishment. The legislation is complaint-based, permitting individual and group complaints, and applies to both public and private companies under federal jurisdiction.

- Despite the statute's potential application to any type of work in the establishments covered, in practice the cases to date have tended to focus on comparisons within a relatively narrow range of job families; therefore, they have not really illustrated the difficulties sometimes inherent in weighing the values of widely dissimilar jobs.

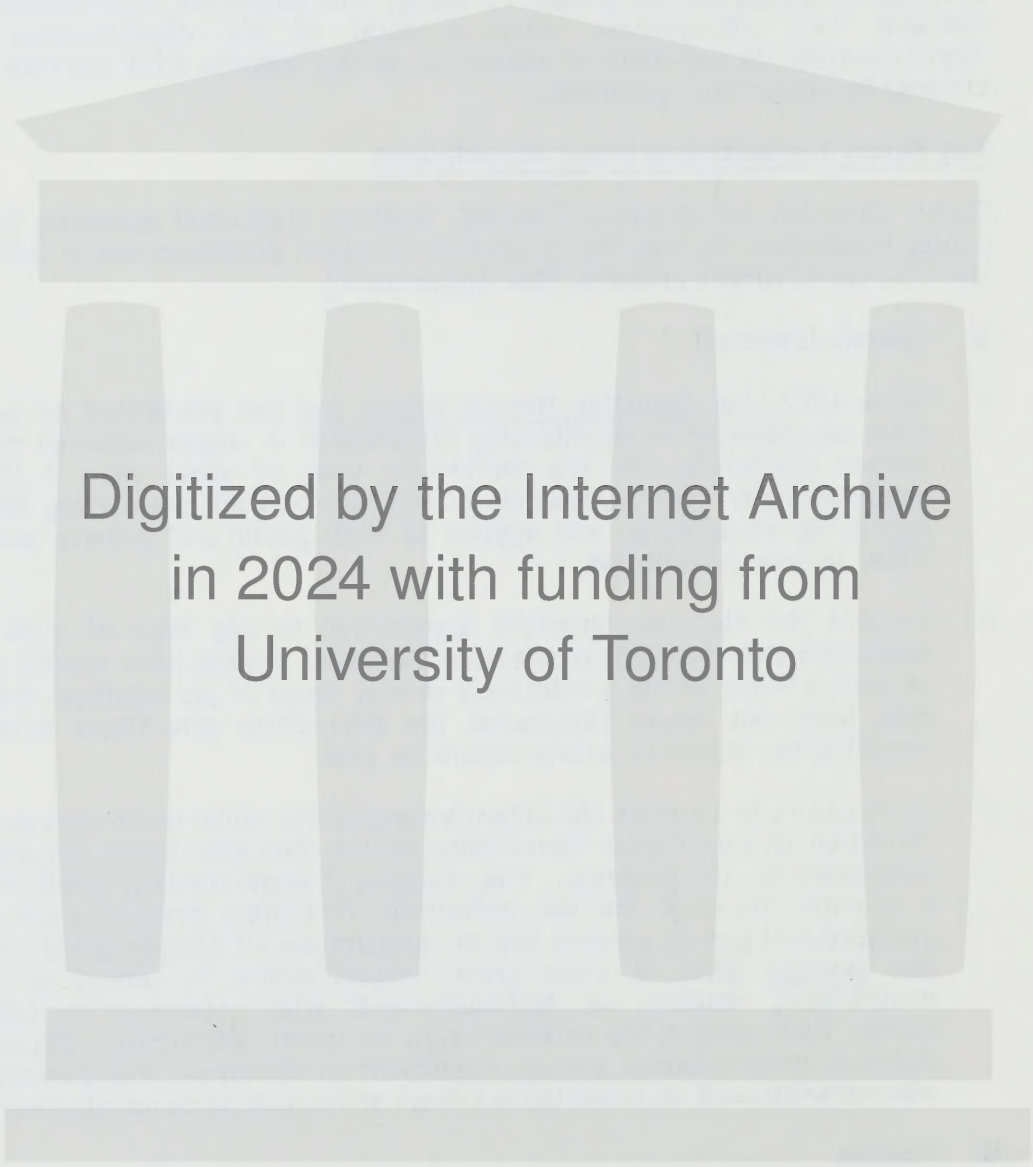
- In an effort to improve the effectiveness of the equal value provisions, the Canadian Human Rights Commission earlier this year issued proposed new guidelines for the program. The changes, if implemented, would establish a specific standard for the definition of female predominance for an occupational group; provide for the adjustment of female group wages to the average level of male group wages, either by direct or indirect comparison; redefine an "establishment" with reference to functional rather than geographic criteria (e.g., to cover all workers subject to a common compensation policy, regardless of location); and prescribe the characteristics of an acceptable system to be used to determine value.

ii) Quebec

- Since 1976, the Quebec Charter of Rights and Freedoms has provided that every employer (public and private) must pay equal wages or salaries to workers performing equivalent work at the same place. As with the Federal jurisdiction, practical experience in application of the equal value principle has been very limited.

iii) Manitoba

- In July of this year, the Pay Equity Act was enacted, applying the equal value principle to the provincial civil service, crown agencies and a



number of other public sector institutions (including universities and health care organizations). Employers are required to apply a single job evaluation system, free of gender-bias, to male- and female-dominated job classes to identify pay inequities.

- The adjustment mechanism is through the collective bargaining process (rather than via complaints, for example), with provision for reference to arbitration in event of a failure by the parties to reach agreement. The statute itself sets maximum annual limits on total pay adjustments (1 per cent of total payroll) over a 4-year phase-in period. A newly created Pay Equity Bureau will monitor compliance, and a Pay Equity Commissioner will oversee implementation in the civil service.

iv) U.S. Jurisdictions

- Federal law does not explicitly incorporate the equal value (or comparable worth) principle. However, a number of lawsuits have been launched on behalf of state employees, based on Title VII of the Civil Rights Act, which prohibits discrimination in compensation for employment. In addition, three states have mandated pay equity principles, and many more have proposed or undertaken studies on the issue.

- **Minnesota** has a program whereby funds are made available for comparable worth salary adjustments to be applied to female-dominated positions identified as underpaid, with the distribution details negotiated in collective bargaining. A four-year timetable has been established, with annual implementation expenditures based on 1 per cent of total payroll. Last year, a bill was passed extending pay equity to local governments.

- **Iowa** passed legislation in 1983 prohibiting state departments and other state organizations from discriminating in compensation for equal or comparable work between female- and male-dominated jobs. Following completion of a study designed to establish a method of evaluating jobs, $24 million has been appropriated for pay adjustments, to be allocated in collective bargaining.

- Finally, in a highly publicized case, the largest state employees' union won a court judgement against the **State of Washington** for discrimination following the state's refusal to correct pay inequities for female-dominated jobs which were identified in a state-approved comparable worth study. The judgement, which involved a very considerable retroactive pay adjustment, was recently overturned on appeal.

III. KEY ISSUES

1. General Implementation Approach

- The three basic alternative models are:

  i) A complaint-based mechanism (e.g., as in current Federal and Quebec schemes);

  ii) A proactive approach, with no provision for complaints;

iii) A proactive approach combined with provision for complaints.

- The complaint-based approach, as exemplified by the current Federal and Quebec statutes, appears to have had a relatively limited impact, in practice, on wage levels in female-dominated groups.

- A proactive approach, on the other hand, would require a pay equity plan to be developed and implemented within specified statutory parameters.

- A proactive approach may hold greater promise in terms of its potential for achieving a more significant impact on female wage levels within a shorter time frame.

- The very extensive coverage of collective agreements in the OPS (in contrast to the situation in many areas of the private sector) suggests that a proactive approach, if selected, might most appropriately be implemented through the collective bargaining process. In this case, of course, suitable alternative arrangements would be required to deal with workers outside of the bargaining unit.

- The combination of a proactive approach with some provision for individual complaints may also be feasible. However, practical considerations may serve to place some restrictions on the range of complaints which might be entertained during the proactive implementation period. This particular question is addressed in the next sub-section.

2. Provision for Individual Complaints

- If a proactive approach is used, alternatives include:

  i) Preclude individual complaints on any implementation issues during the proactive phase;

  ii) Permit complaints on all issues (including pay adjustments) during the proactive phase;

  iii) Permit complaints on issues related to the nature of the pay equity plan (but not with respect to individual job comparisons) during the proactive phase.

- Under any of the options outlined above, complaints could be carried by an individual, group or third party acting on behalf of individuals or groups.

- Upon completion of the proactive phase, any of the above alternatives could be followed by a full complaints mechanism designed to ensure continued observance of pay equity principles.

- The main justification associated with permitting complaints related to the basic features of the pay equity plan would be to provide an extra safeguard to ensure that the interests of individual workers or groups are protected during the implementation period.

- Allowing a full range of complaints, including those related to wage adjustments based on comparisons between individual jobs, could be difficult to reconcile with a proactive scheme based on group comparisons and effected

through the collective bargaining system. In practice, it is likely that the two approaches would establish different standards for assessing the pay adjustment required to bring each individual job into conformity with legislative requirements.

3. Administrative Body

- In selecting a suitable body to administer the proposed legislation and to oversee implementation, the choice rests between:

  i) Utilization of an existing agency (e.g., Ontario Human Rights Commission, Employment Standards Branch);

  ii) Creation of a new agency.

- The choice may be influenced, in part, by the general implementation approach adopted. However, the nature of a pay equity program - in particular, the need to incorporate highly specialized expertise within the administrative body - may argue for the creation of a new body.

- Clearly, the nature and extent of the powers to be granted to the designated enforcement agency are dependent on a number of detailed features of the program, including the general implementation approach to be utilised.

- Under the terms of a proactive program, in order to ensure compliance with the statutory requirements, the duties of the enforcement agency would include review of the terms of pay equity plans and the power to order amendments where necessary.

- The agency's powers during the proactive phase might include the ability to entertain and act upon complaints related to the general parameters or features of a pay equity plan. Upon completion of the proactive phase, the agency's powers regarding complaints could be expanded to permit it also to direct pay adjustments where complaints are found to be valid.

- In addition, the agency could have complementary functions to its enforcement duties such as public education and the provision of consultative services to employers and employees or their representatives concerning the development of pay equity programs.

4. Employee Coverage

- The Ontario Public Service includes a variety of types of workers with varying degrees of permanence including classified, unclassified; full-time, part-time; seasonal; casual; and student workers.

- Alternative approaches include:

  i) Benefits of the program to apply to all persons working in the OPS;

  ii) Benefits to apply to a defined group of employees only.

- Coverage of all persons working in the OPS would inevitably bring under the orbit of the pay equity program a number of positions held by workers with a relatively tenuous employment relationship with the employer.

- An alternative approach might be to determine coverage with reference to the definition of an employee found in the Crown Employees Collective Bargaining Act and the Public Service Act. This would have the effect of including all employees except students and certain casual workers.

- If the pay equity plan is couched in terms of the comparison of positions, then most of the problems of characterising incumbents do not arise.

5. Exclusions from Pay Equity Plans

- It may be desirable to provide for reasonable grounds for exclusion of some jobs from the application of pay equity plans. The nature of these possible exclusions is tied, in part, to the general implementation approach adopted (i.e., whether a complaint-based or proactive model is used).

- Alternatives include:

  i) No provision for exclusions;

  ii) Conferring of general powers on the enforcement agency to allow exclusions;

  iii) Selective exclusions, explicitly specified in the statute, e.g., training positions or those which are red-circled or held by persons with impaired health or disability. Note that seniority would not be a factor if comparisons were of positions rather than of individuals.

- Failure to make any provision for possible exclusions runs the risk of creating rigidities in the pay structure which may inhibit the use of particular positions for training or rehabilitation purposes, for example. The complaint-based model contained in the Canadian Human Rights Act allows exemptions from the equal pay for work of equal value requirements in both of these situations; it also exempts red-circled positions and positions held by workers with impaired health or partial disability.

- The need to specify a reasonably comprehensive list of exemptions may be diminished if a group-based proactive approach, rather than an individual complaint-based approach, is used. However, in either case the question arises as to whether any provision should be made for an exemption based on unusual market conditions or serious labour shortages.

6. Definition of Gender Predominance

- The purpose of incorporating a definition of gender predominance of a group of employees is to differentiate between traditionally male and female jobs, and to establish an eligibility standard for pay equity comparisons.

- Alternatives include:

  i) No definition (i.e., allow all pay equity comparisons between jobs held by females and jobs held by males);

  ii) Establish a fixed, invariable standard, (e.g., 70 per cent of job incumbents of one sex);

iii) Establish a basic standard, but provide for the addition of other cases, e.g., by agreement of the parties, regulation, etc.

- The most frequently advanced rationale for a pay equity program rests on the notion that the dominant presence of females in certain occupations has traditionally been associated with a general societal undervaluation (and underpayment) of the work involved, relative to the work primarily performed by males.

- Selection of an appropriate level for defining gender predominance is inevitably somewhat subjective. A basic 70 per cent figure to define predominance has been used in some U.S. jurisdictions. Manitoba also uses the same figure, but has added provisions which permit an extension of the definition in certain circumstances. Such an approach provides a minimum guarantee as to coverage, while permitting a more flexible standard to be used in appropriate cases. A flexible standard also provides for the consideration of historical patterns of gender predominance of an occupation within and/or external to an enterprise.

- It has been argued that use of the same predominance test for male and female jobs is open to question, in view of the differing proportions of males and females in the overall workforce. In the OPS situation, since females constitute the minority, this line of reasoning might be used to justify a lower predominance threshold for female-dominated jobs.

.7. Measurement of Pay

A. Definition of Pay/Compensation

- Alternatives include:

i) Address only direct wages and salaries;

ii) Address, separately, direct wages and salaries and other forms of compensation affecting employee entitlements (and potentially containing gender-bias).

- A program focussed only on direct wages and salaries would likely be simpler to administer, since quantification of non-wage benefits is sometimes difficult. On the other hand, it might be argued that their exclusion from a pay equity program would effectively diminish the protection thereby afforded to workers, in view of the growing importance of non-wage benefits in the total compensation package.

- In practice, however, in situations where the benefit and working conditions package applies equally to all workers covered by it, male and female alike, attention is likely to be focussed most closely on gender-based differences in pay.

B. Definition of Job Rate

- In general, wage and salary structures in the OPS are characterized by pay ranges for each job, with pay levels and progression within the range reflecting factors such as individual merit, seniority and so on. In the interest of

establishing a clear basis upon which pay comparisons can unambiguously be made, it may prove necessary to specify which of the available pay rates are to be used.

- Alternatives include:

  i) Use of actual pay rate being received;

  ii) Use of the maximum rate or job rate.

- In view of the close relationship between seniority and salary progression within a range, use of actual pay rates received would require that further arrangements be made to create an exclusion for legitimate seniority-related pay differences (an approach used by the Canadian Human Rights Commission).

- The "job rate" for each position constitutes a single salary point which can be used for purposes of comparing pay levels in different jobs. However, the way in which the job rate is defined is not uniform across all agencies within the OPS. In the Civil Service, for example, the job rate is the maximum rate.

8. Determination of Value

- Legislation may indicate the basis upon which the value of different jobs is to be determined. Alternatives include:

  i) General guidelines only e.g., value to be determined according to the criterion of the composite of skill, effort, responsibility, and working conditions, to be applied in a manner free of gender-bias;

  ii) Specific, detailed guidelines.

- The use of general guidelines would permit the bargaining parties to exercise greater latitude in developing a pay equity plan which is adapted to the particular circumstances in which it is to be applied. Monitoring and review of the plans concluded could ensure that the legislative intent was being appropriately translated into action.

- The insertion of specific, detailed guidelines in the statute may be seen as providing a more explicit assurance that pay equity plans will conform to certain standards. However, given the wide variety of legitimate job evaluation or job comparison schemes from which to select, it might prove difficult to develop detailed guidelines and at the same time avoid imposing inappropriate, restrictive or unnecessarily rigid job measurement methodologies on the bargaining parties.

9. Legislative Specification of Implementation Standards

- An important issue is the degree to which the legislation itself should seek to incorporate specific standards covering appropriate methods of implementing pay equity. The implementation of pay equity could include a variety of approaches ranging from those which involve limited comparisons between male- and female-dominated jobs leading to adjustments, e.g., equalization of wages for base rate jobs followed by similar adjustments to all jobs in the female-dominated category, to more complex methods of comparison/evaluation involving the systematic comparison/evaluation of all

jobs or of representative jobs from which inequities could be identified and adjustments based. The latter approach may entail standards regarding:

i) Identification of appropriate job comparison methodologies -

There are a wide variety of job comparison/evaluation methodologies available, e.g., ranking, grading or classification, factor comparison, and point-rating methods. These job evaluation methods provide a range of qualitative/quantitative approaches to job evaluation.

ii) Definition of comparison groups-

Group-based comparisons of jobs are consistent with a proactive approach to the implementation of pay equity. The level of aggregation of jobs - the operational definition of group - for comparison purposes has important implications for the availability of redress through pay equity policy and for the extent of dislocation of existing pay structures. Within the OPS bargaining unit the following levels of aggregation exist: class, class series, occupational group and category.

iii) Specifications regarding direct and indirect comparisons -

Comparisons between jobs or groups of jobs for the purpose of establishing relationships in terms of relative value and, in turn, appropriate rates of pay can take two approaches: (1) a direct comparison approach relying on job to job comparisons or (2) indirect comparisons analyzing the relationship between the values assigned to jobs and their rates of pay in terms of the distribution of the jobs under comparison.

iv) Specifications regarding degree of adjustment -

Where direct job to job comparisons have been utilized, it is conceivable that a number of male jobs of equal value but receiving different and higher rates of pay than the female job under comparison may be identified. In such a case, a decision concerning the appropriate rate of pay for adjustment, e.g., highest, average, or lowest, would be required.

The adoption of an indirect comparison approach assumes an averaging of the rates of pay in the construction of pay-lines for adjustment purposes.

- In each case, the basic alternatives are for the legislation to remain silent on implementation details (leaving them to be resolved by the bargaining parties, subject to compliance with the overall terms of the program) or to specify criteria at varying levels of detail.

- Adoption of a specific and directive approach would ensure strict consistency of application of the standards established, but would diminish the ability of the bargaining parties themselves to devise solutions adapted to their own individual circumstances.

10. Phasing of Implementation

- Implementation of a pay equity program, from a determination of the method to be used to compare jobs to the completion of pay adjustments, will clearly require time. The question arises as to whether, and to what extent, a specific timetable should be established to guide the implementation process.

- The basic alternatives are:

  i) No specification of time limits, with the process simply subject to ongoing review by the designated enforcement agency;

  ii) Specification of certain time limits for some or all of the various implementation stages, perhaps with extension with the approval of the enforcement agency.

- The main advantage of establishing time limits would be to guide, and hopefully to help expedite, the process of negotiation of pay equity plans, and to provide a degree of assurance to all interested parties that the momentum of the overall program will be maintained.

- However, any time lines specified must reflect a realistic appraisal of the time actually required to complete the various steps. Since it is conceivable that time requirements may differ between the separate organizations covered, some arrangement may be required to permit a variance from the uniform time limits in justifiable circumstances.

- Given the possibility that the formal pay adjustments arising out of a pay equity plan may not commence for some time (while the details of the plan are being developed), it may be desirable to give consideration to introducing some interim pay adjustment measures in the meantime, based on broad pay equity principles.

11. Limits on Pay Adjustments

- This issue involves consideration of whether the pay equity program should incorporate pay adjustment limits as a means of spreading the impact of the program over a specified period of time. The Manitoba Pay Equity Act, for example, limits the magnitude of mandated pay adjustments on an annual basis, within the context of a program of a four year duration.

- The issue arises mainly within the context of a proactive program. It would be more difficult to justify inclusion of arbitrary adjustment limits, either on an annual or overall basis, for a complaint-driven model. The Canadian Human Rights Act contains no such limits, for example.

- Alternatives include:

  i) Limit total pay equity adjustments to a percentage of payroll, to be spread over a specified period (e.g., a total of 4 per cent over 4 years, as in Manitoba);

  ii) Limit annual adjustments to a percentage of payroll (e.g., 1 per cent per annum), with no overall time limit;

iii) Limit annual adjustments of pay increases for particular job categories;

iv) Set no limits on duration of program or size of adjustments.

- The mandated adjustments would define the extent of the employer's pay equity liability on an overall or annual basis, but would not preclude the voluntary assumption, through negotiation or otherwise, of additional obligations (e.g., in order to complete the overall adjustment process by an earlier date).

- The first alternative runs the risk of leaving a number of identified pay inequities unresolved at the end of the program. Analysis done in Minnesota, and utilised in Manitoba, suggest that an overall 4 per cent cost "cap" would be sufficient to cover all necessary pay equity adjustments. While there is some evidence to suggest that Ontario's overall "wage gap" may be somewhat smaller than in either of these jurisdictions, this cannot be established with certainty in advance of the conclusion of a detailed pay equity plan (since the measure of the gap is dependent on the nature of the job comparison procedures which are used).

- The third alternative would allow individual pay increases to be phased in, rather than have potentially large changes all at one time.

- If a proactive approach is adopted, then, whichever of the alternatives mentioned above is selected, the program will ultimately come to an end naturally, whenever the pay inequities identified in the pay equity plan have been eliminated. Thereafter, a means may be required to ensure that the new pay structures created are maintained, and that pay equity principles continue to be observed in future. This might be achieved by use of a complaints mechanism to come into operation at the conclusion of the proactive adjustment period (see Issue #2).

12. Scope of Pay Comparisons

- The breadth or scope of the grouping of jobs within which comparisons may be made for pay equity purposes will have an important bearing on the overall impact of the program. Generally speaking, the broader the scope of comparisons the greater the opportunites presented for successfully locating compensation inequities (and thus for securing corresponding adjustments in pay).

- However, the mechanics of making such adjustments, and particularly of maintaining the new pay equity pay relativities thereby established, are considerably complicated by the existence of different bargaining units within an organization. Both the Ontario Housing Corporation and Ontario Provincial Police have multiple bargaining units, and the Ontario Civil Service has a system of category bargaining. Therefore, the issue to be resolved is whether pay equity comparisons should extend beyond the boundaries of existing bargaining units and relationships and, if so, how the implications for current collective bargaining practices are to be handled.

- Alternative approaches include:

  i) Provide for organization-wide pay equity comparisons for each employer covered, irrespective of the number or type of pay units/bargaining units involved;

  ii) Provide for pay equity comparisons within the management excluded group and within each separate bargaining unit for each employer covered with arrangements for moving to organization-wide comparisons in a second stage.

- Pay equity policy generally involves the installation of common measurement standards, and the subsequent maintenance of the pay relativities which they justify. This may present a problem where separate bargaining units are involved, unless those units are prepared to tolerate an erosion in their respective abilities to pursue their own independent bargaining objectives.

- However, confinement of comparisons to jobs within particular bargaining units may place significant limitations on the extent to which dissimilar jobs can be compared.

- The second alternative mentioned above represents a compromise position, whereby the scope of comparisons would be expanded subject to resolution of the associated collective bargaining implications by the parties involved.

- To the extent that across-category comparisons within the Civil Service are contemplated, as well as across-bargaining unit comparisons, modifications to the current system of collective bargaining and arbitration will have to be made.

APPENDIX A

JOB EVALUATION METHODOLOGIES

- The main job comparison/evaluation approaches include ranking, grade description, benchmark/factor comparison, and point rating systems. The basic features of these methods are as follows:

  Ranking - The basic feature of the ranking system is that whole jobs are compared with respect to a criterion of "worth" or "value", usually not further defined.

  Grade Description - A set of definitions of various degrees of difficulty or levels of different job characteristics, e.g., skill, is developed. Each job is assessed against these levels, resulting in an overall ranking of jobs.

  Factor Comparison - A set of characteristics or factors upon which the evaluation is to be based, e.g., skill, effort, etc., are chosen. Key jobs, or benchmarks, are selected and analyzed with respect to each of the factors, resulting in a ranking of the benchmark jobs. The other jobs are then compared to these on a factor-by-factor basis and ranked accordingly.

  Point Rating - A set of compensable factors, e.g., skills, effort, are chosen and for each factor a scale representing increasing levels of worth is devised and points assigned to levels on the scale. The factors are usually assigned different weights in the overall total of the job points or scores. Each job is rated on each factor separately, and assigned a corresponding number of points for the rating on the scale for each factor. The total point score or job value is computed from the addition of the factor points.

APPENDIX B

EXPERIENCES IN OTHER JURISDICTIONS

CANADIAN

(i) Federal

- The Canadian Human Rights Act (Section 11) prohibits an employer from establishing or maintaining differences in wages between male and female employees in the same establishment who are performing work of equal value. The criterion for assessing the value of work performed is a composite of skill, effort, responsibility, and working conditions. It applies to all federal public sector and federally regulated companies. A complaint-based human rights model, permitting both individual and group complaints, requires that the jobs being compared be equal within a range of plus or minus 10 per cent on a point factor basis for equality of value to be found. Guidelines prescribe a number of reasonable factors for differences in wages, including labour market shortages.

- The equal value cases to date have provided only limited experience with the principle of equal value, as they have not involved difficult tests to determine the value of widely dissimilar jobs.

- The Canadian Human Rights Commission has issued Proposed Guidelines to improve the effectiveness of the equal value provisions. These proposals would:

  (a) Establish a standard for the definition of female predominance of an occupational group in group claims as follows:

  -70% or higher in groups of fewer than 100
  -60% or higher in groups of 100 to 500
  -55% or higher in groups of more than 500

  In addition, the pattern of predominance would have to have been maintained for at least three years.

  (b) Provide for the adjustment of female group wages to the average level of male group wages for work of equal value. This would be determined through the comparison of the average wage paid to each cluster of employees in the comparison groups who are performing work of equal value, or through the adjustment of salaries based on indirect comparisons including statistical methods, such as regression analysis, to establish a salary trend line.

(c) Define establishment according to functional rather than the current geographic terms. Workers would be considered to be in the same establishment when they are subject to a common set of personnel and compensation policies, regulations, and procedures, and when these matters are controlled centrally, even if their administration is delegated to smaller units of the organization.

(d) Reaffirm the principle that the value of the job must be defined in terms of value to the employer of the work performed, but not solely on the basis of labour market conditions.

They would also prescribe the system used to determine value. The Commission will use the employer's job evaluation system provided it is free from gender bias, capable of measuring the relative value of jobs on an establishment-wide basis, and measures job value in terms of the criteria of skill, effort, responsibility, and working conditions.

(ii) Quebec

- The Quebec Charter of Rights and Freedoms provides that every employer must pay equal salary or wages to employees who perform equivalent work at the same place. However, an examination of the cases which have been decided suggest that the application of the equal value principle has been very limited. The legislation covers all public and private sector employers.

- The major value cases which have been settled by the Quebec Human Rights Commission, e.g., Quebec North Shore Paper and Val Cartier Industries, have addressed the problem of inconsistency in the application of a standard job evaluation and compensation system to male and female jobs, rather than questioning the appropriateness of the systems themselves.

(iii) Manitoba

- On July 11, 1985 Manitoba's Pay Equity Act providing equal pay for work of equal or comparable value was passed. Value is to be determined by a composite of skill, effort, responsibility and working conditions. The Civil Service, Crown Agencies, e.g., Hydro, WCB, and 24 external agencies, e.g., universities, health care institutions, are covered by the legislation. In addition, other transfer recipients may be required subsequently by regulation to implement equal value (excluding local government and school boards). The legislation does not apply to the private sector.

- Employers will be required to apply a single gender-neutral job evaluation system to female- and male-dominated job classes to identify pay inequities. The definition of predominance is 70% of employees in a class of one sex. The mechanism for adjustment is the collective bargaining process through which agreements on the appropriate job evaluation system and allocation of wage adjustment funds are to be reached or, in the event of an inability to conclude a collective agreement on pay equity, through arbitration.

- In addition, a Pay Equity Bureau has been established to monitor compliance, receive annual reports from public sector employers and provide pay equity information. A Pay Equity Commissioner will oversee implementation in the public service.

- Pay adjustments are to be phased in over a 4 year period; within any 12 month period, no employer is obligated to allocate more than 1% of the previous year's payroll budget for adjustments and no more than 4% over four years.

UNITED STATES

- In the United States, equal value initiatives have been limited to the public sector and have proven to be extremely contentious. Only three states have mandated equal value principles; however, numerous states have either undertaken or proposed major studies of the issue. At least half a dozen equal value lawsuits filed on a behalf of state employees are underway. The lawsuits have been initiated by unions who assert that, because Title VII of the 1964 Civil Rights Act makes discrimination in compensation for employment illegal, jobs of comparable worth are required to be compensated equally and that failure to meet this requirement constitutes discrimination. Job evaluation systems have figured predominantly in these lawsuits. However, the status of comparable worth under federal law is at present uncertain as the legislative language does not explicity incorporate the principle of equal pay for work of equal value or comparable worth. The 9th U.S. Circuit Court of Appeals has recently overturned a 1983 District Court decision requiring the State of Washington to provide equal pay for work of equal value to its female employees.

- In addition, the U.S. Commission on Civil Rights has taken the position that Federal civil rights enforcement agencies, including the Equal Employment Opportunity Commission (EEOC), should reject comparable worth and that Congress should not adopt legislation that would establish comparable worth in either the federal or private sector. The EEOC itself has now endorsed that position.

(iv) State of Washington

- In 1974 the head of the largest state employees' union, the Washington Federation of State Employees (American Federation of State, County and Municipal Employees - AFSCME) and the Washington State Women's Commission asked for a study comparing the salaries of sex-segregated positions. The governor approved the study and jobs in which incumbents were predominantly (at least 70 per cent) of the same sex were chosen for evaluation.

- Willis and Associates conducted the comparable worth study using a point factor job evaluation system which showed that there was virtually no overlap in average salary in any given point range for male- and female-dominated jobs. Overall the average rate of

compensation for female-dominated jobs was only 80 per cent of that for male-dominated jobs. The legislature chose not to implement an equal pay policy based on the findings of the study.

- In 1981 AFSCME filed a complaint with the U.S. Equal Opportunity Commission alleging that the state maintained lower rates for predominantly female jobs than for male jobs of equal or less value, in spite of findings of the state study that many predominantly female jobs were discriminatorily underpaid.

- In 1982 AFSCME filed suit against the state based on its EEOC complaint. In 1983 the District Court concluded that the state was guilty of intentional discrimination and awarded a substantial remedy, including backpay. The U.S. Court of Appeals has recently overturned this decision in a ruling which maintains that reliance on the market system to set compensation for employees is not in and of itself a violation of federal law.

(v) Minnesota

- Minnesota state government has approximately 34,000 full-time employees in more than 1,800 job classifications. State employees are covered by the Public Employment Labour Relations Act, defining 16 occupationally-based bargaining units. Eleven unions represent these units, with 6 represented by the American Federation of State, County, and Municipal Employees. Approximately 86% of state government employees are covered by collective bargaining agreements.

- In 1979, Hay and Associates was commissioned to develop a job evaluation system for the state service. In 1981, the Minnesota Commission on the Economic Status of Women established a pay equity task force to consider pay equity for state employees. Using the Hay Job Evaluation System, the study documented wage disparities between male- and female-dominated job classes and recommended that money be appropriated to eliminate the disparities.

- Every two years, the Commissioner of Employee Relations submits a list of male-dominated classes which are underpaid according to the Hay System, as well as an estimate of the costs for full salary equalization. The Commission on Employee Relations then recommends an amount to be appropriated for comparability adjustments as a salary supplement to be used only for salary equalization according to the job classes on the list submitted by the Commissioner. The actual distribution of salary increases is negotiated through the usual collective bargaining process. A four year time-table has been established with the state spending 1% of its payroll each year for implementation costs.

- In 1984, the Minnesota Legislature passed a bill extending pay equity to local governments—cities, counties, and school districts—accounting for approximately 163,000 workers. The bill requires that each subdivision use a job evaluation system to determine comparable value (their own system or one used by another public employer in the state) and sets out a timetable for implementation.

(vi) New York State

- In 1982, the state and its largest employee union, the Civil Service Employees' Association, agreed to a contract providing $500,000 for a joint comparable worth study. In 1983 they contracted with the State University of New York at Albany's Centre for Women in Government to conduct the comparable worth study. The objectives of the study are to determine the extent of discrimination in pay between female-dominated and minority-dominated job categories, to pinpoint specific jobs that may be undervalued, and to provide estimates of the extent of undervaluation. In addition, the Arthur Young firm has been commissioned to complete a study of the overall classification and compensation systems and to test the feasibility of using different job evaluation methodologies for evaluating jobs.

- The 1985 contract provides $16 million for the redress of any inequities identified by the studies, which are both to be completed this year.

(vii) Iowa

- 1983 legislation prohibits a state department, board, commission, or agency from discriminating in compensation for equal work or comparable work between jobs held predominantly by women and jobs held predominantly by men. Comparable work is defined as the value of work as measured by a composite of skill, effort, responsiblity, and working conditions. The law required the state to conduct a study to establish a method of evaluating jobs under the state merit employment system on the basis of comparable work. Arthur Young and Associates completed the study in March 1984. $24 million have been appropriated for comparable work adjustments to be allocated through the collective bargaining process. Non-union employees are to receive the same comparable work adjustments as unionized employees.

EUROPE

- In 1975 the Council of the European Communities adopted an Equal Pay Directive mandating equal pay for work of equal value. Although the principle has been adopted in legislation in most of the European countries, there have been few equal value cases to indicate how the principle is to be applied.

(viii) Great Britain

- On January 1, 1984 Britain's 1970 Equal Pay Act was amended to bring its provisions into compliance with European Economic Community requirements. The prior equal value provisions were very restrictive-for example, they precluded women from claiming equal pay for work of equal value unless a job evaluation scheme or study was agreed on by the employer and applied in the particular undertaking. The new provisions apply where a women is employed in work which is, "in terms of the demands made on her (for instance under such headings as effort, skill and decision), of equal value to that of a man in the same employment."

- The new provisions contain no procedure for dealing with collective agreements which do not provide equal pay for work of equal value.

- Justifications available to the employer for pay differences for work of equal value allow a potentially wide economic/"market forces" justification ("market forces" arguments which reflect direct or indirect sex discrimination on the labour market are contrary to EEC law principles).

(ix) France

- France has had equal value legislation for over a decade. The law introduced in 1972 required employers to ensure that men and women received "equal pay in respect of the same work or work of equal value. All types of and criteria for job classification and upgrading schemes and all other bases for calculating pay, including job evaluation systems, must be the same for employees of either sex."

- The new 1983 provisions provide a definition of equal value. They state that "work shall be considered of equal value where the demands on employees are comparable overall in terms of the vocational knowledge recognized by a title, diploma or practice on the job, the skills gained from the experience acquired, (and) the responsibilities and physical and mental demands involved." The onus is on the employer to justify any differences in pay, and the benefit of any doubt is to be exercised in the employee's favour.